

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

UNITED STATES DISTRICT COURT

Southern District for the Georgia

FILED
U.S. DISTRICT COURT
BRUNSWICK DIV.

2024 MAY -3 A 11: 04

Jose Lora

Petitioner

v.

Case No.

2:24 cv 61

(Supplied by Clerk of Court)

Warden G. Sweeney

Respondent

(name of warden or authorized person having custody of petitioner)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Jose Lora
 (b) Other names you have used: none
2. Place of confinement:
 (a) Name of institution: Jesup Federal Correctional Institution
 (b) Address: 2680 Highway 301 South, Jesup, GA 31599 (satellite low compound)
 (c) Your identification number: 76245-054
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain:
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you: District Court for the Southern District of New York, 40 Centre St. New York, NY 10007
 (b) Docket number of criminal case: 16 CR 44 (KPF)
 (c) Date of sentencing: March 12, 2020
☐ Being held on an immigration charge
☐ Other (explain):

Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☐ Other (explain): _____

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Bureau of Prisons

(b) Docket number, case number, or opinion number: _____

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):

The bureau of prisons is refusing to apply First Step Act time credits to my sentence. They claim this is because there is a final order of deportation. This is an error on their part because a final order of deportation has never been issued.

(d) Date of the decision or action: January 17, 2023**Your Earlier Challenges of the Decision or Action**7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Bureau of prisons(2) Date of filing: 12-22-2023(3) Docket number, case number, or opinion number: 1187878-F1(4) Result: denied(5) Date of result: 1-15-2024

(6) Issues raised: Improper application of time credits. Time credits were not applied due to the mistaken statement that there is a final order of deportation. Also, that the petitioner was brought here on extradition not illegal reentry

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☒ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Bureau of prisons(2) Date of filing: 1-17-2024(3) Docket number, case number, or opinion number: 1187878-F1(4) Result: Denied(5) Date of result: 1-17-2024(6) Issues raised: Improper decision to not apply FSA time credits because of final order of deportation. However there is no valid order of deportation

(b) If you answered "No," explain why you did not file a second appeal:

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☒ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: Bureau of prisons(2) Date of filing: 1-17-2024(3) Docket number, case number, or opinion number: 1187878-F1(4) Result: Denied(5) Date of result: 1-31-2024(6) Issues raised: Refusal to apply FSA Time Credits, even though because of a final order of deportation. There is no final valid final order of deportation

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(b) If you answered "No," explain why you did not file a third appeal:

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Case number: _____
- (3) Date of filing: _____
- (4) Result: _____
- (5) Date of result: _____
- (6) Issues raised: _____

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: _____
- _____
- _____
- _____

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☒ Yes☐ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: 12-14-18
- (b) Date of the removal or reinstatement order: there is none
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes☒ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____
- _____
- _____
- _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes☒ No

If "Yes," provide:

- (1) Name of court: _____
- (2) Date of filing: _____
- (3) Case number: _____

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

_____12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

_____**Grounds for Your Challenge in This Petition**

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: The B.O.P is violating constitutional law by
saying there is a final order of deportation. The B.O.P is not
giving Petitioner credit for the FSA time credits he earned. The reason
given by the B.O.P administration is that in their denial of Petitioner's

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

(a) Supporting facts (Be brief. Do not cite cases or law.):

Administrative remedy request is that there is a final order of deportation. They argue that Pehlwaner is in prison for illegal reentry. However, he was extradited to the U.S. and is not here voluntarily. Therefore the illegal reentry finding is invalid. Even if there is illegal reentry that is not enough for a final order of deportation. Pehlwaner is still entitled to a full hearing. Vizcarra v. Comm'r of Immigration, 273 U.S. 103 (1927). Pehlwaner has a hold, but he is still entitled to FSA time credit. Komando v. Lenz, 2023 U.S. Dist. LEXIS 11477*2 (D.N.H. 1-13-2023); 18 U.S.C. § 3632 (d)(4)(E). Pehlwaner was never before an immigration judge.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes☐ No

GROUND TWO:

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes☐ No

GROUND THREE:

(a) Supporting facts (Be brief. Do not cite cases or law.):

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes☐ No

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

GROUND FOUR:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: none

Request for Relief

15. State exactly what you want the court to do: Petitioner wants the B.O.P. to apply the FSA time credits he earned to his sentence.

AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison-mail system:

April 21, 2024

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

April 21, 2024

Jose Lora

Signature of Petitioner

Signature of Attorney or other authorized person, if any

ATTACHMENT A

JES 1330.16

INFORMAL RESOLUTION

INFORMAL RESOLUTION INSTRUCTIONS: Administrative Remedy Program requires, in most cases, that inmates attempt informal resolution of grievances prior to filing a formal written complaint. This form will be used to document your efforts toward informally resolving your grievance. An inmate with a valid complaint must complete the first three sub-sections (A,B,C) below and submit this to his assigned Counselor. Only ONE (1) request per form.

Inmate Name: Jose Lora Reg No: 76245-054 Unit: BA

Date form issued to inmate: 1/15/24 Date form received from inmate: 1/17/24

Section I: Inmate Complaint/Action

A. INMATE'S COMPLAINT: I am not receiving my first step act time credits. I am eligible because I do not have a final order of deportation against me.

B. RELIEF REQUESTED: I am requesting that my file be amended to reflect the fact that I do not have a final order of deportation. I am also requesting that my time credits be applied to my sentence

C. EFFORTS MADE TO RESOLVE THE COMPLAINT (include contacts with staff, written copouts, etc.) (can continue on back) I have spoken with my case manager and my counselor. I have also filed a written copout. I have also had people try to contact immigration, but there is never an answer from them.

Section II: Staff Action(s):

Informally Resolved ()

Unable To Resolve (✓)

STAFF COMMENTS (efforts to resolve informally): I am unable to resolve this issue at Unit team level. This will need to be addressed at Institution level.

COUNSELOR'S SIGNATURE & DATE: R. McGowan J. Forsyth 1/17/24

UNIT MANAGER'S SIGNATURE & DATE: [Signature] 1/17/24

BP-9 Issued to inmate on: _____ **BP-9 Returned to staff on:** _____

ADMINISTRATIVE REMEDY RESPONSE

INMATE: LORA, JOSE
REG. NO.: 76245-054

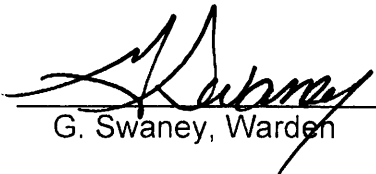
REMEDY NO.: 1187878-F1

This is in response to your Request for Administrative Remedy wherein you request First Step Act credits be applied to your sentence. As relief, you request all your time credits be applied to your sentence and your release date to be adjusted accordingly.

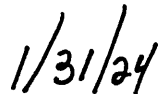
A review was conducted and revealed you have a Final Order for Deportation. According to Program Statement 5410.01, section 10 APPLICATION OF FTCs, part (a) How Time Credits may be applied, states "For any inmate eligible to earn FSA Time Credits under this subpart who is: (2) Subject to a final order of removal under immigration laws as defined in 8 U.S.C. 1101(a)(17) (see 18 U.S.C. 3632(d)(4)(E)), the Bureau may not apply FSA Time Credits toward prerelease custody or early transfer to supervised release."

Based on the aforementioned, your requested relief is denied.

If you are not satisfied with this response, you may appeal on the appropriate form to the Regional Director, Southeast Regional Office, 3800 Camp Creek Parkway, S.W., Building 2000, Atlanta, Georgia, 30331-6226. Your appeal must be received in the Regional Director's Office within 20 days of the date of this response.



G. Swaney, Warden



Date

U.S. DEPARTMENT OF JUSTICE
Federal Bureau of Prisons

REQUEST FOR ADMINISTRATIVE REMEDY

Type or use ball-point pen. If attachments are needed, submit four copies. Additional instructions on reverse.

From: Lora, Jose 76245-054 B3 Jesup FSL
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A- INMATE REQUEST that the FSA time credits I have earned be applied to my sentence. The stated reason for the denial is that there is a final order of deportation against me. However, according to immigration law, there cannot be a valid removal order. I am requesting that a BOP official call immigration. That way the BOP will be advised of my status of having an immigration detainer, not a removal order. An inmate with an immigration detainer is entitled to time credits under the FSA. Komando v Luna, 2023 U.S. Dist. LEXIS 11477 *2 (D. N.H. Jan. 13, 2023), see also 18 U.S.C. § 3632(d)(4)(E). I have not been in front of a judge or magistrate on my immigration case. Therefore, I have never had the opportunity to fight a deportation order. An order of deportation would violate Constitutional law

1/16/24

DATE

José Luis Lora

SIGNATURE OF REQUESTER

Part B- RESPONSE

DATE

WARDEN OR REGIONAL DIRECTOR

If dissatisfied with this response, you may appeal to the Regional Director. Your appeal must be received in the Regional Office within 20 calendar days of the date of this response.

ORIGINAL: RETURN TO INMATE

CASE NUMBER: 1187878-F1

CASE NUMBER: _____

Part C- RECEIPT

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)



Requirement for submission of this request directly to the Regional Director, Bureau of Prisons.

When the inmate believes that he may be adversely affected by submission of this request at the institution level because of the sensitive nature of the complaint, he may address his complaint to the Regional Director. He must clearly indicate a valid reason for not initially bringing his complaint to the attention of the institution staff.

If the inmate does not provide a reason, or if the Regional Director or his designee believes that the reason supplied is not adequate, the inmate will be notified that the complaint has not been accepted. The form sent to the Regional Director will not be returned. However, the inmate may prepare a new request and submit it at the institution if he wishes.

Jose Lora

BP-S148.055 INMATE REQUEST TO STAFF CDFRM SEP 98
U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

TO: (Name and Title of Staff Member) Counselor McGowan	DATE: 12-22-2023
FROM:	REGISTER NO.: there cannot be a valid
WORK ASSIGNMENT: Compound pm	UNIT: B-3

SUBJECT: (Briefly state your question or concern and the solution you are requesting. Continue on back, if necessary. Your failure to be specific may result in no action being taken. If necessary, you will be interviewed in order to successfully respond to your request.) I am requesting that my federal time credits under the first step act be applied to my sentence. I am currently being denied my time credits. The stated reason for the denial is that I have a final order of deportation against me. However, I cannot have a final order of deportation because I have never been before an immigration judge or magistrate. In Walters v. Commissioner of Immigration, the court held that a removal order cannot be instituted without first having a hearing. At most there can be an immigration detainer. However, even if I have a detainer, I am entitled to FSA time credits. Comando v. Luna, 18 U.S.C. § 3532(d)(4)(E)

A hearing before a judge or magistrate
Therefore, I am entitled to FTCs that I have earned
and they must be applied to my sentence.

(Do not write below this line)

273

U.S. 103, 71 L. & 560 (1927)

DISPOSITION:

Jose Lora
Reg No. 76
Federal Correc
2680 Highway 501 South
Tusup, GA 31559



Clerk of District Court
Southern District of Georgia
Brunswick Division
P.O. Box 1636
~~Gloucester~~
Gloucester Street
Brunswick, GA
31520

INSPECTED BY

ES
MAY 03 2024

U.S. Marshals Service